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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 15-121; FCC 15-108]

Assessment and Collection of Regulatory Fees for Fiscal Year 2015

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission revises its Schedule of Regulatory Fees to recover an amount of \$339,844,000 that Congress has required the Commission to collect for fiscal year 2015. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

DATES: Comments are due **[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and Reply Comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418-0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), FCC 15-108, MD Docket No. 15-121, adopted on September 1, 2015 and released on September 2, 2015.

I. ADMINISTRATIVE MATTERS

A. Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),¹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Further Notice of Proposed Rulemaking.

B. Initial Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

C. Filing Instructions

3. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

4. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

D. Ex Parte Information

5. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with §1.1206(b). In proceedings governed by §1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

II. INTRODUCTION AND EXECUTIVE SUMMARY

6. In the Further Notice of Proposed Rulemaking in this docket, we seek further comment on changes to our methodology in calculating regulatory fees for AM and FM broadcast radio and on

reallocating FTEs from the Wireline Competition Bureau working on numbering and universal service issues.

III. BACKGROUND

7. Congress adopted a regulatory fee schedule in 1993² and authorized the Commission to assess and collect annual regulatory fees pursuant to the schedule, as amended by the Commission.³ As a result, the Commission annually reviews the regulatory fee schedule, proposes changes to the schedule to reflect changes in the amount of its appropriation, and proposes increases or decrease to the schedule of regulatory fees.⁴ The Commission makes changes to the regulatory fee schedule “if the Commission determines that the schedule requires amendment to comply with the requirements”⁵ of section 9(b)(1)(A) of the Act.⁶ The Commission may also add, delete, or reclassify services in the fee schedule to reflect additions, deletions, or changes in the nature of its services “as a consequence of Commission rulemaking proceedings or changes in law.” Thus, for each fiscal year, the proposed fee schedule in the annual Notice of Proposed Rulemaking (NPRM) will reflect changes in the amount appropriated for the performance of the FCC’s regulatory activities, changes in the industries represented by the regulatory fee payers, changes in Commission FTE levels, and any other issues of relevance to the proposed fee schedule.⁷ After receipt and review of comments, the Commission issues a Report and Order adopting the fee schedule for the fiscal year and sets out the procedures for payment of fees.

² 47 U.S.C. 159 (g) (showing original fee schedule prior to Commission amendment).

³ 47 U.S.C. 159

⁴ 47 U.S.C. 159(b)(1)(B).

⁵ 47 U.S.C. 159(b)(2).

⁶ 47 U.S.C. 159(b)(1)(A).

⁷ Section 9(b)(2) discusses mandatory amendments to the fee schedule and Section 9(b)(3) discusses permissive amendments to the fee schedule. Both mandatory and permissive amendments are not subject to judicial review. 47 U.S.C. 159(b)(2) and (3).

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Broadcasters' Regulatory Fees

8. In the FY 2015 NPRM, we sought comment on whether the Commission should review the apportionment of regulatory fees among broadcasters. We sought comment on whether the Commission should reexamine the number of FTEs devoted to the regulation of radio versus television broadcasters and adjust the fee paid by radio and television broadcasters to more accurately take into account factors related to “the benefits provided to the payor of the fee by the Commission’s activities.”⁸ NAB filed comments in support of our effort to better align fees with the FTEs working on broadcast issues, but observes that we have not yet provided information about the relevant FTEs.⁹ We have reviewed the categories of work performed by FTEs in the Media Bureau, in order to provide further information for commenters on this issue. The Media Bureau, consisting of 169 FTEs, develops, recommends, and administers the policy and licensing programs for electronic media, including cable television, broadcast television, and radio in the United States and its territories, and also handles post-licensing matters regarding DBS service. The Media Bureau has 25 FTEs in the bureau front office, (including staff assigned to Bureau-wide administrative support), 51 in the Audio Division, 27 in the Industry Analysis Division, 13 in Engineering Division, 29 in the Policy Division, and 24 in the Video Division. Some of these FTEs may be categorized as auctions-funded, depending on the Commission’s auctions schedule. All of the Engineering Division FTEs work on cable issues, and some FTEs from the Policy and Industry Analysis Divisions also work on cable issues. Of the 52 FTEs in the Audio Division, approximately 42 are assigned to FM and 10 to AM. The 25 FTEs in the Video Division work on television

⁸ 47 U.S.C. 159(b)(1)(A) (providing for adjustment of the FTE allocation to “take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.”).

⁹ NAB Comments at 2.

issues. We seek further comment on whether and how to reform our regulatory fee assessments for broadcasters.

9. The Commission assesses regulatory fees on radio broadcasters based on type and class of service and on the population they serve. Earlier this year we sought comment on whether the dividing points for higher fee levels for both television and radio broadcasters remain appropriate and observed that “no single ratio apports regulatory fees among AM and FM radio categories.”¹⁰ We seek further comment on rationalizing the regulatory fee table for radio broadcasters. First, we seek input on including a higher population row in the table, dividing radio broadcasters that serve 3,000,001–6,000,000 people from those that serve more. Second, we seek input on standardizing the incremental increase in fees as radio broadcasters increase the population they serve, such as by requiring that fee adjustments between tiers monotonically increase as the population served increases. Third, we seek input on consistently assessing fees based on the relative type and class of service, such as by assessing FM class B, C, C0, C1, & C2 stations at twice the rate of AM class C stations, and FM class A, B1, & C3 stations assessed at 75 percent more than AM class C stations. For AM stations, we seek comment on assessing AM class A stations at 60 percent more, AM class B stations at 15 percent more, and AM class D stations at 10 percent more than AM class C stations (i.e., at roughly the relative rates assessed today). Taking these options together, we seek comment on the following potential table of regulatory fees for radio broadcasters.

PROPOSED RADIO STATION REGULATORY FEES						
Population	AM Class A	AM Class	AM Class	AM Class	FM Classes	FM Classes
Served		B	C	D	A, B1 & C3	B, C, C0, C1 &

¹⁰ FY 2015 NPRM, 30 FCC Rcd at 5359, para. 13.

						C2
<=25,000	\$910	\$655	\$570	\$625	\$1,000	\$1,140
25,001 – 75,000	\$1,370	\$985	\$855	\$940	\$1,495	\$1,710
75,001 – 150,000	\$1,825	\$1,310	\$1,140	\$1,255	\$1,995	\$2,280
150,001 – 500,000	\$2,735	\$1,965	\$1,710	\$1,880	\$2,995	\$3,420
500,001 – 1,200,000	\$4,560	\$3,280	\$2,850	\$3,135	\$4,990	\$5,700
1,200,001–3,000,000	\$6,840	\$4,915	\$4,275	\$4,705	\$7,480	\$8,550
3,000,001–6,000,000	\$9,120	\$6,555	\$5,700	\$6,270	\$9,975	\$11,400
>6,000,000	\$11,400	\$8,195	\$7,125	\$7,840	\$12,470	\$14,250

10. The Commission assesses regulatory fees on television broadcasters based on the markets they serve (1–10:11–25:26–50:51–100: Remaining Market). Before the Commission combined the VHF and UHF regulatory fee categories, the ratio of regulatory fees for VHF stations (then considered the most valuable stations) was roughly 14:11:7:4:1. Today, it is roughly 10:9:6:3:1. We seek comment on readjusting the table to restore the traditional determination that Top 10 stations should pay about twice what stations in markets 26–50 pay (that is, the new ratios would be 12:9:6:3:1). With this change, and adjusting to recover the same total regulatory fees as television broadcasters pay today, we seek comment on the following potential table of regulatory fees for television broadcasters.

Digital TV (47 CFR part 73) VHF and UHF Commercial	BEFORE	AFTER
Markets 1-10	\$46,825	\$55,025
Markets 11-25	\$43,200	\$41,270

Markets 26-50	\$27,625	\$27,515
Markets 51-100	\$16,275	\$13,755
Remaining Markets	\$4,850	\$4,585
Construction Permits	\$4,850	\$4,585

11. NAB also observes that after the spectrum incentive auction there may be fewer television stations, resulting in material changes in the regulatory fee apportionment among the remaining stations.¹¹ We seek comment on whether, when, and how the Commission should adjust its methodology for assessing regulatory fees on televisions stations, to respond to such potential changed circumstances consistent with the provisions of Section 9 of the Communications Act.

B. ITTA's Proposals to Reallocate FTEs

12. ITTA has suggested that we should consider all cross-cutting work throughout the Commission, not just in the International Bureau, and we should re-assign certain Wireline Competition Bureau FTEs for regulatory fee purposes.¹² ITTA contends that the Commission should make appropriate adjustments to its regulatory fee structure to reflect that the work of the Wireline Competition Bureau is no longer primarily focused on ITSPs.¹³ According to ITTA, resources expended by Wireline Competition Bureau FTEs increasingly benefit other industry sectors.¹⁴ ITTA argues that the Commission's efforts to modernize the Lifeline program and to conduct a comprehensive analysis of the special access marketplace, for example, generate significant benefits for entities that do not pay regulatory fees as ITSPs.¹⁵

¹¹ NAB Comments at 7-9.

¹² ITTA Comments at 2-5.

¹³ Id. at 3-4.

¹⁴ Id. at 4.

¹⁵ Id. at 4-5.

13. ITTA has previously proposed that we combine wireless providers into the ITSP fee category so that all voice providers pay regulatory fees on the same basis.¹⁶ ITTA continues to endorse this approach and contends that such action would be consistent with the Commission's decision to incorporate interconnected VoIP providers into the ITSP fee category to ensure that such providers are paying their share of regulatory fees in connection with the Commission's oversight of voice services.¹⁷

14. We recognize that there is substantial convergence in the telecommunications industry and organizational changes in the Commission that may support additional FTE reallocations as ITTA contends. Wireless providers are not subject to all of the regulations and requirements imposed on ITSPs. However, there are certain rules (e.g., universal service), that wireless and wireline services benefit from and the Wireline Competition Bureau FTEs provide the oversight and regulation of the industry in these areas.¹⁸ We seek comment on ITTA's proposals to (i) combine wireless voice and wireline services into the ITSP category and, alternatively, to (ii) re-assign certain Wireline Competition Bureau FTEs as indirect for regulatory fee purposes. Concerning any reassignment of direct FTEs, we seek comment on whether it is reasonable and consistent with section 9 of the Act to readjust the assignment of FTEs in the bureau and if the record demonstrates the clearest case for reassignment.¹⁹

15. Commenters supporting ITTA's proposals should also explain: how wireless voice services and wireline services can be combined (currently wireless regulatory fees are calculated per subscriber and ITSP fees are based on revenues) and how we would determine which and how many Wireline Competition Bureau FTEs to reassign as indirect. We note that, as ITTA observes, certain issues handled in the Wireline Competition Bureau benefit wireless providers, and that argument could

¹⁶ Id. at 3.

¹⁷ Id.

¹⁸ 47 CFR 54.900 et seq.

¹⁹ FY 2013 Report and Order, 28 FCC Rcd at 12357-58, para. 19.

support reassigning certain Wireline Competition Bureau FTEs as Wireless Telecommunications Bureau FTEs for regulatory fee purposes.²⁰ For example, given the amount of Universal Service Lifeline Support distributed to wireless providers, should FTEs who work on issues related to such providers be allocated the Wireless Telecommunications Bureau for regulatory fee calculations?²¹ Alternatively, we also seek comment on adopting a new fee category for wireless providers, as a subcategory of the ITSP regulatory fee category, based on a percentage Wireline Competition Bureau FTE work devoted to work related to these wireless regulatees.²²

V. REGULATORY FLEXIBILITY ANALYSIS

Initial Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act (RFA),²³ the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (Further Notice). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this Further Notice. The Commission will send a copy of the Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business

²⁰ Based on staff analysis, approximately 10 FTEs work on high-cost issues, 4 FTEs work on Lifeline issues, 9 FTEs work on E-rate issues, and 4 FTEs work on Rural Health Care issues. In addition approximately 14 FTEs work on numbering issues and/or special access.

²¹ Wireless providers received an estimated \$1.4 billion in Lifeline disbursements in 2014.

²² See, e.g., FY 2014 NPRM, 29 FCC Rcd at 10782-84, paras. 38-43.

²³ 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

Administration (SBA).²⁴ In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.²⁵

A. Need for, and Objectives of, the Notice

17. The Further Notice seeks comment regarding adjusting the regulatory fees paid by broadcasters, for radio and television. Specifically, the Commission seeks comment on the extent of FTEs that work on video, cable, DBS, and radio services, and whether the current proportion of fees paid by these various fee categories associated with these services are still accurate. The level of FTE activity on these media services determines the proportion of fees to be paid by each media service fee category, which in turn is used to calculate the fee amount for each fee category.

B. Legal Basis:

18. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.²⁶

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply:

19. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.²⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁹ A “small

²⁴ 5 U.S.C. 603(a).

²⁵ Id.

²⁶ 47 U.S.C. 154(i) and (j), 159, and 303(r).

²⁷ 5 U.S.C. 603(b)(3).

²⁸ 5 U.S.C. 601(6).

²⁹ 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, (Continued....)

business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.³⁰

20. **Small Entities.** Our actions, over time, may affect small entities that are not easily

(Continued from previous page) _____

after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

³⁰ 15 U.S.C. 632.

categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected by the proposals under consideration.¹ As of 2009, small businesses represented 99.9 percent of the 27.5 million businesses in the United States, according to the SBA.² In addition, a “small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field.”³ Nationwide, as of 2007, there were approximately 1,621,215 small organizations.⁴ Finally the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”⁵ Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.⁶ We estimate that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.”⁷ Thus, we estimate that most local government jurisdictions are small.

21. **Wired Telecommunications Carriers.** The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications

¹ See 5 U.S.C. 601(3)-(6).

² See SBA, Office of Advocacy, “Frequently Asked Questions”, available at <http://www.sba.gov/faqs/faqindex.cfm?arealD=24>.

³ 5 U.S.C. 601(4).

⁴ See Independent Sector, The New Nonprofit Almanac and Desk Reference (2010).

⁵ 5 U.S.C. 601(5).

⁶ See SBA, Office of Advocacy, “Frequently Asked Questions,” available at http://www.sba.gov/sites/default/files.FAQ_March_2011_Opdf.

⁷ The 2011 Census Data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local organizations were small, we note that there were a total of 729 cities and towns (incorporated places and civil divisions) with populations over 50,000. See <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>. If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 789, 237 are small.

network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”⁸ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁹ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.¹⁰ Thus, under this size standard, the majority of firms in this industry can be considered small.

22. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹¹ According to Commission data, census data for 2007 shows that there were 3,188 establishments that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.¹² The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Further Notice.

23. **Incumbent LECs.** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size

⁸ See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>

⁹ See 13 CFR 120.201, NAICS Code 517110.

¹⁰ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5 &prodType=table.

¹¹ 13 CFR 121.201, NAICS code 517110.

¹² See *id.*

standard, such a business is small if it has 1,500 or fewer employees.¹³ According to Commission data, 3,188 firms operated in that year. 1,307 carriers reported that they were incumbent local exchange service providers.¹⁴ Of this total, 3,144 operated with fewer than 1,000 employees.¹⁵ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies proposed in the *Further Notice*. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.¹⁶ Of this total, an estimated 1,006 have 1,500 or fewer employees.¹⁷

24. **Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁸ U.S. Census data for 2007 indicate that 3,188 firms operated during that year. Of that number, 3,144 operated with fewer than 1,000 employees.¹⁹ Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.²⁰ Of

¹³ 13 CFR 121.201, NAICS code 517110.

¹⁴ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ *Id.*

¹⁸ 13 CFR 121.201, NAICS code 517110.

¹⁹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=%20table.

²⁰ See *Trends in Telephone Service*, at Table 5.3.

these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.²¹ In addition, 72 carriers have reported that they are Other Local Service Providers.²² Of this total, 70 have 1,500 or fewer employees.²³ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the proposals in this *Notice*.

25. **Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁴ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.²⁵ Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.²⁶ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Further Notice.

26. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS Code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of

²¹ Id.

²² Id.

²³ Id.

²⁴ 13 CFR 121.201, NAICS code 517110.

²⁵ See Trends in Telephone Service, at Table 5.3.

²⁶ Id.

telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Mobile virtual networks operators (MVNOs) are included in this industry.²⁷ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.²⁸ U.S. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.²⁹ Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.³⁰ All 193 carriers have 1,500 or fewer employees.³¹ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Further Notice.

27. **Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³² Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.³³ Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.³⁴ Of this total, an estimated 211 have 1,500 or fewer employees.³⁵

²⁷ <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

²⁸ 13 CFR 121.201, NAICS code 517911.

²⁹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

³⁰ See Trends in Telephone Service, at Table 5.3.

³¹ Id.

³² 13 CFR 121.201, NAICS code 517911.

³³ Id.

³⁴ See Trends in Telephone Service, at Table 5.3.

³⁵ Id.

Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the proposals in this Further Notice.

28. **Toll Resellers.** The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁶ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.³⁷ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.³⁸ Of this total, an estimated 857 have 1,500 or fewer employees.³⁹ Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposals in the Further Notice.

29. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁰ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000

³⁶ 13 CFR 121.201, NAICS code 517911.

³⁷ Id.

³⁸ See Trends in Telephone Service, at Table 5.3.

³⁹ Id.

⁴⁰ 13 CFR 121.201, NAICS code 517110.

employees.⁴¹ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁴² Of these, an estimated 279 have 1,500 or fewer employees.⁴³ Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Further Notice.

30. **Wireless Telecommunications Carriers (except Satellite).** This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.⁴⁴ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census Data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.⁴⁵ Of this total, an estimated 261 have 1,500 or fewer employees.⁴⁶ Consequently, the Commission estimates that approximately half of these firms can be considered

⁴¹ Id.

⁴² See Trends in Telephone Service, at Table 5.3.

⁴³ Id.

⁴⁴ NAICS Code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

⁴⁵ See Trends in Telephone Service, at Table 5.3.

⁴⁶ Id.

small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

31. **Cable Television and other Subscription Programming.**⁴⁷ Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers. That category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”⁴⁸ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.⁴⁹ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 had fewer than 1,000 employees.⁵⁰ Thus under this size

⁴⁷ In 2014, “Cable and Other Subscription Programming,” NAICS Code 515210, replaced a prior category, now obsolete, which was called “Cable and Other Program Distribution.” Cable and Other Program Distribution, prior to 2014, were placed under NAICS Code 517110, Wired Telecommunications Carriers. Wired Telecommunications Carriers is still a current and valid NAICS Code Category. Because of the similarity between “Cable and Other Subscription Programming” and “Cable and other Program Distribution,” we will, in this proceeding, continue to use Wired Telecommunications Carrier data based on the U.S. Census. The alternative of using data gathered under Cable and Other Subscription Programming (NAICS Code 515210) is unavailable to us for two reasons. First, the size standard established by the SBA for Cable and Other Subscription Programming is annual receipts of \$38.5 million or less. Thus to use the annual receipts size standard would require the Commission either to switch from existing employee based size standard of 1,500 employees or less for Wired Telecommunications Carriers, or else would require the use of two size standards. No official approval of either option has been granted by the Commission as of the time of the release of the FY 2015 NPRM. Second, the data available under the size standard of \$38.5 million dollars or less is not applicable at this time, because the only currently available U.S. Census data for annual receipts of all businesses operating in the NAICS Code category of 515210 (Cable and other Subscription Programming) consists only of total receipts for all businesses operating in this category in 2007 and of total annual receipts for all businesses operating in this category in 2012. Hence the data do not provide any basis for determining, for either year, how many businesses were small because they had annual receipts of \$38.5 million or less. See http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51I2&prodType=table.

⁴⁸ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), (Full definition stated in paragraph 6 of this IRFA) available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁴⁹ 13 CFR 121.201, NAICS code 517110.

⁵⁰ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=Table.

standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the Further Notice.

32. **Cable Companies and Systems.** The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.⁵¹ Industry data indicate that there are currently 4,600 active cable systems in the United States.⁵² Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.⁵³ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁵⁴ Current Commission records show 4,600 cable systems nationwide.⁵⁵ Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁵⁶ Thus, under this standard as well, we estimate that most cable systems are small entities.

33. **Cable System Operators (Telecom Act Standard).** The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." Approximately 52,403,705 cable video subscribers in the United States today.⁵⁷ Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not

⁵¹ 47.CFR 76.901(e)

⁵² August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations And Licensing System(COALS). See www.fcc.gov/coals

⁵³ See SNL KAGAN at www.snl.com/interactiveX/top_cableMSOs.aspx?period2015Q1&sortcol=subscribersbasic&sortorder=desc.

⁵⁴ 47 CFR 76.901(c)

⁵⁵ See footnote 2, *supra*.

⁵⁶ August 5, 2015 report from the Media Bureau based on its research in COALS. See www.fcc.gov/coals

⁵⁷ See SNL KAGAN at www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx.

exceed \$250 million in the aggregate.⁵⁸ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.⁵⁹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁶⁰ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

34. **All Other Telecommunications.** “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁶¹ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁶² For this category, census data for 2007 show that there were 2,383 firms that operated for the entire year. Of these firms, a total of 2,346 had gross annual

⁵⁸ 47.901(f) and notes ff. 1, 2, and 3.

⁵⁹ See SNL KAGAN at www.snl.com/Interactivex/TopCable_MSOs.aspx.

⁶⁰ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. See 47 CFR 76.901(f).

⁶¹ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶² 13 CFR 121.201; NAICs Code 517919.

receipts of less than \$25 million.⁶³ Thus, a majority of “All Other Telecommunications” firms potentially affected by the proposals in the Further Notice can be considered small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

35. This Further Notice does not propose any changes to the Commission’s current information collection, reporting, recordkeeping, or compliance requirements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁶⁴

37. This Further Notice seeks comment on the Commission’s regulatory fee collection for radio and television broadcasters, including comment on exempting smaller broadcasters from regulatory fees. Specifically, the Commission seeks comment on the extent of FTEs that work on video, cable, DBS, and radio services, and whether the current proportion of fees paid by these various fee categories associated with these services are still accurate. The level of FTE activity on these media services determines the proportion of fees to be paid by each media service fee category, which in turn is used to calculate the fee amount for each fee category. Since this determines the fee rate for big and

⁶³ http://factfinder.census.gov/faces/tableservices.jsf/pages/productview.xhtml?pid+ECN_2007_US.51SSSZ4&prodType=table.

⁶⁴ 5 U.S.C. 603(c)(1)through(c)(4).

small media companies, the Commission is sensitive to the impact of any changes in the proportion of FTE activity on companies in the media industry.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

38. None.

VI. ORDERING CLAUSES

39. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Report and Order and Further Notice of Proposed Rulemaking **IS HEREBY ADOPTED**.

40. **IT IS FURTHER ORDERED** that this Further Notice of Proposed Rulemaking **COMMENTS ARE DUE [INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER AND REPLY COMMENTS ARE DUE [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

41. **IT IS FURTHER ORDERED** that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch.

Secretary.